

1 MORGAN, LEWIS & BOCKIUS LLP
Nicole A. Diller (State Bar No. 154842)
2 Donald P. Sullivan (State Bar No. 191080)
Andrew C. Sullivan (State Bar. No. 226902)
3 One Market, Spear Street Tower
San Francisco, California 94105
4 Telephone: (415) 442-1000
Facsimile: (415) 442-1001
5
6 Attorneys for North Star Trust Company

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 THOMAS FERNANDEZ, LORA SMITH,
and TOSHA THOMAS

12 Plaintiffs,

13 vs.
14

K-M INDUSTRIES HOLDING CO., INC.;
15 K-M INDUSTRIES HOLDING CO., INC.
ESOP PLAN COMMITTEE; WILLIAM
16 E. AND DESIREE B. MOORE
REVOCABLE TRUST; TRUSTEES OF
17 THE WILLIAM E. AND DESIREE B.
MOORE REVOCABLE TRUST;
18 ADMINISTRATOR OF THE ESTATE OF
WILLIAM E. MOORE, DECEASED; CIG
19 ESOP PLAN COMMITTEE; and NORTH
STAR TRUST COMPANY,
20

21 Defendants.

Case No. C06-07339 CW

**STIPULATION AND ORDER
MODIFYING CASE MANAGEMENT
SCHEDULING ORDER FOR
REASSIGNED CIVIL CASE**

22 WHEREAS, this action was reassigned to this Court from the Honorable Martin J.

23 Jenkins;

24 WHEREAS, this Court entered a Case Management Scheduling Order for Reassigned
25 Civil Case ("Scheduling Order") on March 5, 2008, modifying Judge Jenkins's December 16,
26 2007 Pre-Trial Order;

27 WHEREAS, the Scheduling Order set July 31, 2008, as the deadline for hearing motions
28 for summary judgment on the issue of statute of limitations;

1 WHEREAS, Defendants filed their respective motions for summary judgment and noticed
2 the hearings on those motions for July 31, 2008;

3 WHEREAS, on July 17, 2008, after the briefing on the Defendants' motions for summary
4 judgment had been completed but before the motions were heard, the parties filed a Stipulation
5 and [Proposed] Order continuing the hearing on Defendants' motions to September 11, 2008, so
6 that the parties could participate in a private mediation on August 18, 2008;

7 WHEREAS, after the parties filed their Stipulation and [Proposed] Order continuing the
8 hearing on the Defendants' motions, one of the parties essential to the mediation became
9 unavailable for the scheduled mediation. The first day after August 18, 2008 on which the
10 mediator, Mr. Tony Piazza, and all of the parties were available to participate in the mediation
11 was September 12, 2008, the day *after* the stipulated hearing date on the Defendants' motions for
12 summary judgment. The parties have reserved September 12, 2008, with Mr. Piazza;

13 WHEREAS, the parties continue to believe that mediation is likely to be more productive
14 if it is conducted before the Court holds the hearing on Defendants' motions for summary
15 judgment; and

16 WHEREAS, continuing the hearing date on the Defendants' motions to a date subsequent
17 to the September 12, 2008 mediation necessarily impacts the other dates in the Scheduling Order,

18 NOW THEREFORE AND FOR GOOD CAUSE SHOWN, THE PARTIES HEREBY
19 STIPULATE and AGREE as follows:

- 20 1. The hearing on Defendants' Motions for Summary Judgment shall be continued to
21 October 30, 2008, at 2:00 p.m.;
- 22 2. Disclosure of experts and initial reports shall be completed by November 28, 2008;
- 23 3. Disclosure of rebuttal experts and reports shall be completed by December 19,
24 2008;
- 25 4. Expert discovery shall be completed by January 23, 2009;
- 26 5. Last day for hearing dispositive motions shall be March 26, 2009, at 2:00 p.m.;
- 27 6. Case Management Conference shall be held on March 26, 2009, at 2:00 p.m.;

28 ///

1 7. The pre-trial conference shall be held on June 30, 2009, at 2:00 p.m.; and

2 8. The bench trial (15 days) shall commence on August 3, 2009, at 8:30 a.m..

3
4 **IT IS SO STIPULATED:**

5 I, Donald P. Sullivan, attest, pursuant to General Order No. 45, Rule X, that the
6 undersigned concur in the filing of this Stipulation.

7 DATED: August 20, 2008

LOVITT & HANNAN, INC.

8
9 By: /S/ Henry Bornstein

Henry Bornstein
Attorneys for Defendants K-M Industries
Holding Co., Inc.; K-M Industries Holding
Co., Inc. ESOP Plan Committee; and CIG
ESOP Plan Committee

10
11
12 DATED: August 20, 2008

HENNIGAN, BENNETT & DORMAN LLP

13
14 By: /S/ Allison Chock

Lauren Smith
Allison Chock
Attorneys for Defendants William E. and
Desiree B. Moore Revocable Trust; Trustee
of the William E. and Desiree B. Moore
Revocable Trust; Desiree B. Moore
Revocable Trust; William E. Moore Marital
Trust; William E. Moore Generation-
Skipping Trust; and Desiree Moore

15
16
17
18
19 DATED: August 20, 2008

MORGAN, LEWIS & BOCKIUS LLP

20
21 By: /S/ Donald P. Sullivan

Nicole A. Diller
Donald P. Sullivan
Attorneys for Defendant North Star Trust
Company

22
23
24 DATED: August 20, 2008

LEWIS, FEINBERG, LEE, RENAKER &
JACKSON, P.C.

25
26 By: /S/ Daniel M. Feinberg

Daniel M. Feinberg
Todd Jackson
Attorneys for Plaintiffs Thomas Fernandez,
Lora Smith, and Tosha Thomas

ORDER

FOR GOOD CAUSE SHOWN, it is hereby ordered that the Court's March 5, 2008 Scheduling Order shall be amended as follows:

1. The hearing on Defendants' Motions for Summary Judgment shall be continued to October 30, 2008, at 2:00 p.m.;
2. Disclosure of experts and initial reports shall be completed by November 28, 2008;
3. Disclosure of rebuttal experts and reports shall be completed by December 19, 2008;
4. Expert discovery shall be completed by January 23, 2009;
5. Last day for hearing dispositive motions shall be March 26, 2009, at 2:00 p.m.;
6. Case Management Conference shall be held on March 26, 2009, at 2:00 p.m.;
7. The pre-trial conference shall be held on June 30, 2009, at 2:00 p.m.; and
8. The bench trial (15 days) shall commence on August 3, 2009, at 8:30 a.m..

IT IS SO ORDERED.

8/26/08



DATED: _____

The Honorable Claudia Wilken
United States District Judge

DB2/20800807.2